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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Closed Captioning and Video Description of
Video Programming

Implementation of Section 305 of the
Telecommunications Act of 1996

Video Programming Accessibility

MM Docket No. 95-176

**REPLY COMMENTS OF
THREE ANGELS BROADCASTING NETWORK, INC.**

On behalf of Three Angels Broadcasting Network, Inc. ("3ABN"), we hereby submit these reply comments in the captioned proceeding, in which the Commission proposes ultimately to require closed captioning of all programming produced by "providers" of video programming, including the low power television ("LPTV") programming provided by 3ABN. These reply comments are directed specifically to the Comments of the Community Broadcasters Association ("CBA"), which claims to be a "trade association of the nation's LPTV stations." CBA Comments at 2. However, CBA does not represent or speak for 3ABN or its nearly 100 owned or affiliated LPTV stations throughout the country.

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Indeed, 3ABN takes exception to CBA's proposal that any LPTV exemption for closed captioning apply only to "programs produced by a single LPTV station for its own use or those that are broadcast on fewer than 15 stations." CBA gives no support or rationale for its 15 station limit, which fails to account for LPTV operations such as 3ABN's that are non-profit, non-income generating operations. Since 3ABN neither charges affiliates for programming, nor sells advertising to support its programming, it no more has the resources to close caption its programming whether that programming is broadcast by 15 or 150 LPTV stations.

As indicated in 3ABN's initial comments in this proceeding, its religious and educational programming is exactly the type of "niche" programming which led the Commission to earlier declare that LPTV programming "is more than meeting its expectations." 3ABN Comments at 2, quoting *First Report and Order* in MM Docket No. 93-114, 9 FCC Rcd 2555 ¶2 (1994). CBA recognized that LPTV operations "[r]arely . . . make any significant profit or throw off any significant cash flow." CBA Comments at 3. CBA urged that "efforts to increase closed captioned programming not result in the curtailment of local and niche LPTV programming, which is so often the hallmark of LPTV stations." *Id.* at 4. CBA also recognized that a closed captioning requirement "would force LPTV station owners to rely almost solely on syndicated programming that has already been captioned, depriving LPTV's minority and niche audiences of the specialized programs that LPTV

stations are uniquely qualified to provide." *Id.* CBA then ignores its own admonition, however, and proposes an arbitrary 15 station limit for the LPTV exemption.

CBA recognizes that it might be appropriate to require LPTV closed captioning when programming is supplied by a syndicator or network, "but only where the syndicator or network is responsible for adding captioning information to the film or tape." *Id.* at 6. Perhaps *that* ought to be the lodestar that determines when closed captioning must be present. In other words, if LPTV stations obtain their programming from third party programmers and that programming is already closed captioned, then perhaps LPTV stations should be required to retransmit such programming with the captioning intact. In any event, CBA offers no evidentiary support for its proposed 15 station limit, which is not dependent on the source of the programming. If programming is captioned by a third party provider, why should it matter whether it is shown by 15 LPTV stations or by one station? Either way, the programming is already captioned. But the status of syndicated or network-provided programming is a materially different issue from whether an affirmative closed captioning requirement should be imposed on original LPTV programming (regardless of the number of stations involved). In 3ABN's case, such a requirement could well mean the end of its network. Undoubtedly, that is not the result the Commission envisions causing by virtue of its closed captioning requirements, since *less* programming does not serve the public interest.


For the foregoing reasons, as well as those set forth in 3ABN's initial comments in this proceeding, the Commission should exempt LPTV from any closed

captioning requirements, except perhaps where programming provided by a third party is already captioned. Alternatively, the Commission should, at the very least, consider an exemption where the LPTV operation is noncommercial or educational in nature. The number of stations involved is truly irrelevant to the ability of an LPTV operator like 3ABN to close caption its programming.

Respectfully submitted,

THREE ANGELS BROADCASTING NETWORK, INC.

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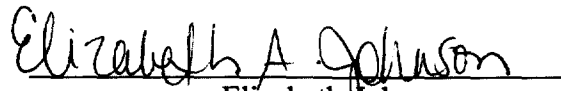
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March 31, 1997

CERTIFICATE OF SERVICE

I, Elizabeth Johnson, hereby certify that on this 31st day of March 1997, copies of the foregoing were mailed, first class, postage prepaid, to the following:

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